Supreme Court, U.S.
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NO. 92-429

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

MARTIN M. MADSON, Petitioner

v.

JANIE MADSON, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF WASHINGTON
STATE

# REPLY TO RESPONSE OF RESPONDENT

Petitioner pro se:

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BEST AVAILABLE COPY

QUESTION PRESENTED:

Does the practice of Washington State Courts which allows one side to argue a motion for reconsideration, but denies the other party an opportunity to argue, violate the due process requirement of the Fifth and Fourteenth Amendments to the United States Constitution?

REPLY ARGUMENT:

The Respondent raised a jurisdictional question indicating that 26 USC § 1257(3) limits this Court's review to state statutes and does not permit review of state court rules (Response to Petition pp. 2-3).

This Court has on at least two prior occasions reviewed the application of state court rules as measured against the United States Constitution.

In Henry v. Mississippi, 379 U.S. 443, 85 S.Ct. 564, 13 L.Ed.2d 408 (1965) this Court examined whether the "contemporaneous objection" rule of evidence of the Mississippi courts barred the raising of a Federal trial right. While this Court remanded that case for a finding of fact regarding whether the failure to make a "contemporaneous objection" was knowing or not, by accepting review of the issue the Court was using the broader interpretation of "statute" used in distinct-

ion from an act of the legislature, as in Story, Conflict of Laws, §12, meaning the whole municipal law of a particular state, from whatever source arising.

Likewise, Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963), reviewed under 28 USC § 2241 whether a state court rule setting a limit on the time for appeal could act as a bar to Federal review in a habeas corpus action. While that case is largely concerned with habeas corpus rights which are now substantially different from those in both the statute and the common law in effect then, the general principal of Fay v. Noia that a state court rule is subject to review by this Court still has vitality.

Finally, the Response discusses at some length issues which I agree are settled under state law, such as the trial court's conclusion that I did not satisfactorily account for my expenditures during the period

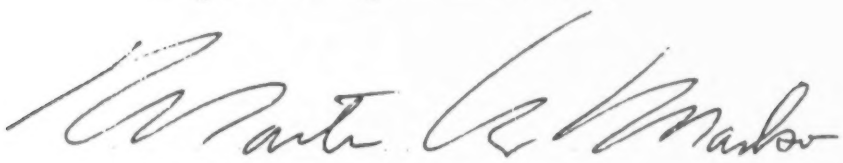
of separation. Those issues are controlled by state law, and are not a part of this appeal. I would gladly make them a part of this appeal if there were any substantial Federal question presented.

Likewise, the trial court awarded me custody of our minor child with no requirement that the Respondent pay child support. That is a clear violation of state law, but does not present a Federal question. That issue, raised in the state court appeals below, was not even addressed by the Washington State Supreme Court, and I wish I could raise it in this Petition; but it presents no question of Federal law, and I am barred from raising it.

Washington State Civil Rule 59(4) was enacted by the Washington State Supreme Court. It is, as Justice Story would agree, part of the municipal law of the State of Washington, and therefore is subject to review by this court under 26 USC § 1257(3) as a statute.

For the foregoing reasons 26 USC 1257(3) provides the jurisdictional basis for this petition for certiorari.

Respectfully submitted,



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